The reasoning of the majority is simple and straightforward. The Constitution, they say, in the second section of the third article extends the judicial power of the United States to controversies between two or more states. The word "controversy," if it means anything, must include a matter so plainly justiciable as a claim for money due on a written promise to pay.[1] The Eleventh Amendment, indeed, forbids suit in a federal court against a state by a citizen of another state or of a foreign state. But as a matter of plain interpretation, sanctioned by the court in time past,[2] this amendment is concerned only with the status of the real parties before the court. Here the real party plaintiff is a state. It follows, then, that although the bonds in the present case were the gift of a private citizen, the court has jurisdiction.

The position of the minority, although less simple, is equally explicit. They rely on the Eleventh Amendment, and insist that it was intended to prevent the prosecution against any state of a suit arising out of dealings between that state and individuals. In support of this view they cite the decisions in Hans *v.* Louisiana[3] and New Hampshire *v.* Louisiana.[4] In the former case a citizen of Louisiana was not allowed to sue that state, the prohibition being held to be within the spirit if not the letter of the eleventh amendment. In the latter, the state of New Hampshire was not allowed to prosecute claims it held in trust for some of its citizens, on the ground that the real parties plaintiff were citizens of another state.

It is difficult to escape the reasoning of the majority. By the Constitution the federal courts are granted jurisdiction in two distinct classes of cases; the first determined solely by the nature of the controversy, the second by the character of the parties. Suits between two or more states would seem to fall within the second class, and it is hard to read into the qualification of the Eleventh Amendment anything which prevents a state when the real party in interest, from suing another state on a claim like that in the principal case. Nevertheless, the court must have reached its conclusion with great reluctance. The difficulties in the way of enforcing decrees against a state government could not have been absent from the minds of the majority although they dismissed them summarily in their opinion.

POSSESSION AS A BASIS FOR ASSESSMENT OF TAXES. — That a state may tax all property within its jurisdiction, even though the owner be a non-resident, is not open to doubt.[1] In the exercise of this power, however, there is often a practical difficulty in discovering the true owner. To avoid this difficulty, statutes have been passed requiring the person in charge of the property to pay the tax and allowing him to reimburse himself at the expense of the owner. It is clear that where such custodian has funds of the owner in his hands this procedure may be justified on the analogy of garnishment, for the custodian as debtor is simply required to discharge an obligation of his creditor. Thus corporations have been compelled to deduct from pay-

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[1] Baldwin, J., in Rhode Island *v.* Massachusetts, 12 Pet. (U. S.) 657, 721.
[2] Marshall, C. J., in Cohens *v.* Virginia, 6 Wheat. (U. S.) 264, 406.
[3] 134 U. S. 1.
[4] 108 U. S. 76.

[1] Coe *v.* Errol, 116 U. S. 517.

ments due to stockholders the taxes upon the individual shares.[2] But where the custodian has no security of which to avail himself against the true owner, it is equally clear on both reason and authority that he cannot be forced to part with his property in order to pay a debt justly due from another.[3] Accordingly, the Supreme Court of Tennessee has recently condemned a statute imposing a privilege tax upon persons conducting the business of advertising in street cars and making the street-car company which leased the privilege liable for the payment of the tax without providing a means by which such company should be reimbursed. *Knoxville Traction Co.* v. *McMillan*, 77 S. W. Rep. 665.

Where, however, the person compelled to pay has no funds, but has other property of the owner in his possession, some difficulty is apparent. Statutes have made the agent liable for taxes upon the goods of his principal in his possession and have given him a lien upon them as security.[4] The constitutionality of these provisions seems never to have been questioned until recently.[5] In a late decision the Supreme Court of the United States has upheld the constitutionality of a Maryland statute compelling warehousemen to pay the taxes upon liquors stored with them and giving them a lien on such liquors for the amount against the owners. *Carstairs* v. *Cochran*, 24 Sup. Ct. Rep. 318. On authority, therefore, it would seem to be settled that any person who has the property of another in his possession may be required to advance the taxes thereon. In other words, for reasons of convenience he may be compelled to surrender his money and take in return property of a different kind. Such a forced exchange is clearly a deprivation of property. Is it a justifiable deprivation? It cannot be a taking by eminent domain, for there is no pretense of a seizure for necessary public purposes. It might possibly be regarded as an exercise of the police power.[6] Certainly there must be inherent in the state governments the power to use all reasonable methods for the collection of taxes. Whether the method prescribed by the legislature is reasonable will not be too closely inquired into by the courts,[7] and this method might well be sustained.

It has been urged that some cases might arise where the custodian would lose not only his money but also his means of reimbursement; for example, if the tax should be greater than the market value of the goods and the owner should refuse to reclaim, or if the goods were destroyed after the tax was paid. It will be found, however, that if the validity of the forced exchange is once recognized, the following well-established rules will cover all such cases: first, a government lien is always a preferred charge; second, a tax greater than the market value is confiscation, not taxation, and would therefore be invalid for that reason; and third, as soon as the warehouseman has paid the tax, he has a property right in the goods, and it is not unjust to subject this right to all the risks and liabilities of ordinary property.

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[2] Bell's Gap R. R. Co. *v.* Pennsylvania, 134 U. S. 232.
[3] Stapylton *v.* Thaggard, 91 Fed. Rep. 93.
[4] Lockwood *v.* Johnson, Collector, 106 Ill. 334.
[5] 1 Cooley on Taxation, 3d ed., 653. *Cf.* New Orleans *v.* Stemple, 175 U S. 309.
[6] See Prentice, Police Power 361.
[7] See Kirkland *v.* Hotchkiss, 10 U. S. 491, 497–498.